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August 25, 1989

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Mr. Alex D. Felker
Chief
Mass Media Bureau
Federal Communications Commission
1919 M Street, Northwest
Room 314
Washington, D. C. 20554

RECEIVED
MAY 17 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re: Request of A. C. Nielsen Company for
Permissive Special Temporary Authority to
Use Line 22 of Active Portion of Television
Video Signal to Broadcast Encoded
Transmission Identification and Verification
Signals, Filed by Letter of Counsel Dated
August 14, 1989.

Dear Mr. Felker:

This law firm represents Airtrax, a general partnership organized under the laws of the State of California ("Airtrax").

By letter to you from its communications counsel dated July 19, 1989, A. C. Nielsen Company ("Nielsen") filed a request (the "Request") for the Commission's permissive authority to use Line 22 of the active portion of the television broadcast video signal to broadcast encoded transmission identification and verification signals, pursuant to Nielsen's Automated Measurement of Lineups ("AMOL") system.

On August 8, 1989, Airtrax submitted to the Commission its Opposition to Request (the "Opposition"), setting forth several grounds for the Commission's denial of Nielsen's Request, based upon established Commission law and policy.

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concerns raised by Airtrax and by others^{*/} in connection with Nielsen's Request are equally applicable to the STA Request.

Airtrax notes that Nielsen has not recited any legally-cognizable basis for the Commission's grant of the extraordinary relief requested in the STA Request. No interruption to nor loss of a current service would be threatened in the absence of the Commission's grant of the STA Request, inasmuch as Nielsen is not currently providing the service that is the subject of the STA Request. Nielsen has shown no risk of loss or damage to life or property that would justify relief in the nature of an STA. At most, Nielsen has alleged that its private business interests might be harmed by a delay in Commission action upon the Request, but that harm--if it exists--is present in virtually every other request or application presented to the Commission. Were the Commission to recognize that "harm" as sufficient justification for interim STA-type relief in every case where the same could be alleged, the Commission's application processing resources would be overwhelmed by parties requesting relief in the nature of STA's, pending Commission action on their regular applications for more permanent authorizations.

Airtrax also observes that Nielsen's August 14 STA Request was filed in a manner that violated the Commission's *ex parte* rules, 47 C.F.R. Part 1, Subpart H (1988). See letter dated August 22, 1989 to Bradley P. Holmes, Esquire, Chief of the Policy and Rules Division of the Commission's Mass Media Bureau, from the undersigned.

For reasons too obvious to require elaboration, Nielsen's misconduct in submitting its August 14 STA Request without service thereof upon Airtrax's counsel of record should not now be rewarded by favorable Commission action on the very supplication that was filed in offense to the Commission's rules of practice and procedure.

^{*/} See letter of August 3, 1989 to Ms. Donna Searcy, Secretary of the Commission, from the Battle, Fowler law firm in New York, New York, on behalf of its client, LBS Communications, Inc.; letter of August 4, 1989 to Mr. Alex D. Felker, Chief of the Commission's Mass Media Bureau, from Donovan Data Systems Inc., New York, New York; letter of August 17, 1989 to Mr. Felker from The Procter & Gamble Company, Cincinnati, Ohio.

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Accordingly, Airtrax respectfully asks the Commission to take no action upon Nielsen's August 19, 1989 STA Request, unless and until there shall have been a prior or simultaneous disposition of the issues raised by Airtrax and by others in the context of Nielsen's July 19, 1989 Request.

In the event that the Commission should have any questions concerning this matter, kindly direct them to the undersigned communications counsel to Airtrax.

Very truly yours,


John G. Johnson, Jr.

cc: The Honorable Alfred Sikes (by hand)
Chairman, Federal Communications Commission
1919 M Street, Northwest, Room 814

The Honorable James H. Quello (by hand)
Member, Federal Communications Commission
1919 M Street, Northwest, Room 802

The Honorable Patricia Diaz Dennis (by hand)
Member, Federal Communications Commission
1919 M Street, Northwest, Room 832

The Honorable Sherrie Marshall (by hand)
Member, Federal Communications Commission
1919 M Street, Northwest, Room 844

The Honorable Andrew Barrett (by hand)
Member-Designate, Federal Communications Commission
1919 M Street, Northwest, Room 826

Bradley P. Holmes, Esquire (by hand)
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Mr. James McNally (by hand)
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